

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

in

SPECIAL CIVIL APPLICATION No. 4012 of 1996

For Approval and Signature:

MR. JUSTICE C.K. THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

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2. To be referred to the Reporter or not? - No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? - No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -No.

5. Whether it is to be circulated to the Civil Judge? - No.

DY CONSERVATOR OF FOREST

Versus

HH LAKHHODA

Appearance:

MR DA BAMBHANIA for the appellant.

Mr.K.B. Pujara, Advocate, for the respondent.

CORAM : THE CHIEF JUSTICE G.D.KAMAT and

MR.JUSTICE C.K.THAKKER

Date of decision: 27/08/96

ORAL JUDGEMENT : (Per G.D. Kamat, C.J.)

Admit. By consent, to be heard forthwith.

Respondent is a Forester and at the relevant time, was posted at Aluvas Round, Santalpur Range. By the order dated 28th May, 1996, the respondent was placed under suspension, alleging some misconduct against him in the matter of issuance of passes, etc. The respondent challenged the order, placing him under suspension, in Special Civil Application No. 4012 of 1996, and at the same time, sought interim relief qua the suspension order. The learned single Judge, upon hearing the parties, granted Rule in the petition, and by interim relief, directed that the placing of the respondent under suspension be held up in abeyance, at the same time, giving liberty to the appellant to transfer the respondent to some other Range.

This order of the learned single Judge dated 30th July, 1996 is challenged by the appellant, Deputy Conservator of Forests.

The first ground of challenge, which is brought to the fore, is that the respondent had alternative remedy of preferring an appeal against the order, placing him under suspension. In that behalf, Rule 18(2) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 is invoked.

Shri Pujara, learned counsel appearing for the respondent, concedes that an appeal is provided against an order, placing an Officer under suspension. But, however, according to him, in as much as the impugned order has been made against the respondent pursuant to the direct instructions from the Minister concerned, the

appeal to any of the Officers in hierarchy will be futile and ineffective. He urged that, in this view of the matter, the Court need not relegate the respondent to the alternative remedy of appeal. Learned counsel for the respondent also drew our attention to certain material from records to suggest that, prima facie, there is no evidence that the respondent has committed any irregularity or misconduct or dereliction of duty so as to invite any order of suspension or disciplinary action.

We have examined the matter from several angles. In the hierarchy of things, it is an admitted position that Conservator of Forests is higher in rank to the Deputy Conservator of Forests. The Conservator of Forests is under Chief Conservator of Forests and the Chief Conservator of Forests comes under Principal Chief Conservator of Forests. Though the respondent has categorically stated that the orders, placing the respondent under suspension; has directly come from the Minister concerned, we take it that when the respondent prefers an appeal, the appeal would be decided in accordance with the Rules and on its merits and needless to say, without being influenced by any extraneous considerations. The fact also remains that the respondent had made representation to almost all the above-mentioned authorities, but then we are told that such representations were made by the respondent on his own and without proper assistance or assistance from a lawyer. We also do not propose to examine the merits of the matter as finally what has happened so far is that the respondent has been placed under suspension and nothing beyond it. It is, therefore, not possible for this Court at this stage to go into the merits of the matter as to why at all the respondent has been suspended. In as much as we are inclined to quash and set aside the impugned order dated 30th July, 1996 on the ground that the respondent has alternative remedy, to make it effective, it is necessary that observation is made that it is open to the respondent to prefer an appeal, within a period of 15 days from today under Rule 18 of the Rules of 1971, to the Conservator of Forests, who shall dispose of the same within one month from the date of institution of the same. In the event the appellant or for that matter, the State Government, wants to proceed against the respondent in a departmental action, we expect the Department to issue memorandum of charges within a period of not more than three months from today. In this view of the matter, the appeal succeeds. The impugned order dated 30th July, 1996 is quashed and set aside. There shall be no order as to costs.

(apj)